

17883

Our Territorial Lands

*A Brief Statement of the Case for
Provincial Control of the
Crown Domain*

— BEING —

*An Address Delivered Before the Young
Men's Liberal Club of
Calgary*

— BY —

Charles A. Stuart, B. A., LL. B.

of Osgoode Hall, Toronto, Barrister at Law, Advocate

*Sometime Fellow in English and Canadian Constitutional History
in the University of Toronto*

THIS
is a bad book

Our Territorial Lands

Mr. President and Gentlemen: I presume there will be little need of my occupying very much of your time in emphasizing the extreme importance of the subject which the club has chosen for discussion tonight. It is a subject which is sure to demand the very serious attention of the people of the Territories in the near future. The sooner therefore we begin to study it the better able we shall be to arrive at proper opinions upon it when the necessity of decision comes upon us. The people of the Territories have been engaged for some time past and are engaged now in building up for themselves through their representatives in the assembly a machinery of government by means of which they are already attempting to do a great many things and hope to do a great many more things which will make heavy calls upon their financial resources. The question of communication in the country districts, the larger question of railway transportation for our farm products, the question of the education of the youth, the questions of drainage and irrigation, of re-foresting our treeless prairies—these and a score of other important problems will press upon us for solution. In order to take them up and deal with them satisfactorily we shall need every cent of revenue that we can possibly secure. Now it is generally understood that at some very near time in the future it is the intention of the Federal Government to change the political status of the Territories and to establish, under the authority which is vested in them, a new province or

provinces in the West. Aside from the question of boundaries the only question upon which the people of the Territories need have any anxiety in this connection at all is the question of the financial terms and conditions upon which the new Province will be erected and the provision to be made for a provincial public revenue. And aside from the question of our nominal debt the only question involved in the financial terms that need give us any anxiety is the question of the control and ownership of the vast stretches of unoccupied lands in the Territories and the revenues to be derived from them. We have in these lands themselves, in the minerals beneath them and the timber upon them a source of revenue whose possibilities in the future cannot really be estimated. The question therefore of control and enjoyment of those revenues becomes of vast importance to the people of the new province.

It is generally understood that we are to be erected into a province which is to occupy an equal place with the original provinces of Canada, that we are to be the full equals politically of the people of Ontario or Nova Scotia. The people of those original provinces through their provincial governments own and control their public lands and at first blush one would suppose that the people of any new province should occupy the same position and enjoy the same privileges. But there seems to be a possibility, though no declaration of policy has yet been made, that the federal government may follow the precedent established in the case of the province of Mani-

toba in 1870 and endeavor to withhold, or rather, to use a more proper word, deprive the people of the Territories of the control and enjoyment of the revenues to be derived from the crown domain. Now I think I am right in saying that the great majority of men in the Territories, who have thought of the question at all, believe that any such settlement of the question would be unfair and unjust and that it would be contrary, if not to the letter, at least to the spirit of our constitutional system. I think I can go further and say that there undoubtedly exists in the minds of the people of these Territories a deep underlying conviction, often imperfectly expressed it may be and often vaguely understood, but still a conviction, that they have a just right to the control and management of these unoccupied lands among which they have settled down and whose value they are yearly enhancing by their energy, thrift and enterprise.

It is therefore with some satisfaction that I take the opportunity kindly afforded me by the Young Men's Liberal Club of Calgary of expressing the views which I entertain upon the subject and of presenting what I believe to be the just claim of the people of the new province to this important source of public revenue.

Now in the remarks I have to make tonight I propose to establish, I trust to your satisfaction, three definite propositions, which are these:

First.—That neither the Dominion Parliament nor the Government of the Dominion, as distinguished from the Sovereign personally, has any strict legal claim whatever to the ownership of the ungranted lands in these Territories nor to the revenues arising from them.

Second.—That the present Territorial Assembly has not now, nor, unless special legislation is passed, will the Legislative Assembly of any new province which is established have, and strict legal claim to the ownership of these lands or to the revenue arising

from them.

Third.—That therefore the question as between Dominion and Provincial Governments is not one of strict law at all but one of high public policy and that according to all the precedents and the spirit of British Colonial history and of the Canadian constitutional arrangements the only proper settlement of the question will be to place these revenues at the disposal of the new provincial assembly when the province is established.

The whole problem is one of constitutional history and constitutional law. We, in Canada, form part of the British Empire and our constitutional law and history have their origin and fountain source in the constitutional law and history of England. There are, therefore, few questions in Canadian Constitutional law and history which can be understood fully and completely without reference to the constitutional law and history of the United Kingdom. And this question of the property right in the lands of the North West Territories and of the right to the revenues derived from them is one which cannot be understood except upon the condition I have mentioned. I must therefore ask you to forget all about Canada or British North America for a time and go with me to old England. Let us enquire what the law is there with respect to ungranted crown domains. Every one acquainted with the constitutional history of England knows that from the time of William the Conqueror onward to the present day the sovereign of England for the time being was and is the absolute lord and proprietor of all lands not granted to individuals. In every period of English history the sovereign of England has had the absolute, unfettered right and privilege of controlling and disposing of crown domains, and of expending the revenues derived from them just as he pleased without the slightest possibility of interference on the part of Parliament. The representatives of the people in parliament assembled

granted of their own substance to the king by way of land taxes or customs duties, and these revenues they therefore asserted the right to manage and control. But with respect to the revenue from Crown lands, with respect to what are known as "Hereditary revenues" of the crown, the sovereign has always had, and unless he has made some bargain with respect to them, has still, the complete and absolute right to expend these revenues as he pleases, simply because according to English constitutional law they are his own personal property. But notice what happened in the course time. The extravagance of the Stuart Kings and the early Guelphs made such inroads upon these revenues that it became a matter of grave public concern. Therefore a custom grew up on the part of parliament of saying to each sovereign on his accession to the throne something like this: "If your majesty will be graciously pleased to turn these hereditary revenues of yours over to us, if you will allow them to be paid into the public exchequer, if you will allow us to husband them and control them as we do the revenues derived from the taxes we pay, if your majesty will be pleased to do this, we, your faithful commons, will give your majesty a permanent vote, payable annually at your pleasure, of so many thousand pounds a year." That proposition was accepted by George III. in 1760 and he surrendered his hereditary revenues derived from the crown domain in England to the control of parliament and received a definite compensation in return. The same bargain was made by George IV. at his succession and by William IV. as well. It was made by Queen Victoria at her succession in 1837 and it was made by King Edward VII. at his succession in 1901. So you see I am not talking ancient history to you but history that is very modern, and as I shall presently explain, very applicable to the subject we are now considering. These bargains between the British Sovereign and the British

Parliament, which are made anew at the accession of each sovereign, because no sovereign ever pretends to bind his successor in the matter, are always embodied in an act of parliament which is always entitled "The Civil List Act." The bargain made by King Edward VII. is embodied in Chapter 4 of the Imperial Statutes of 1901 and is entitled, "An act to make provision for the honor and dignity of the crown and the Royal Family and for the payment of certain allowances and pensions" and contains in its preamble the principle which I have just enunciated. The preamble reads partly as follows: "Most Gracious Majesty: Whereas your majesty has been been graciously pleased to signify to your faithful commons in Parliament assembled that your majesty has been graciously pleased to place at the disposal of Parliament those hereditary revenues which were so placed by your predecessor," and then follows a reference to the desire of the king to make provision for the royal family. Next follow two clauses of the act which are as follows:

"1. The hereditary revenues which were by the civil list act of 1837 directed to be paid into and made part of the consolidated fund shall during the present reign and a period of six months afterwards be paid into the exchequer and be made part of the consolidated fund.

2. There shall during the present reign and a period of six months afterwards be paid for the King's Civil list the yearly sum of £407,000."

Now there is the bargain, made by every sovereign of England with the Parliament on his accession to the throne, with respect to the hereditary revenues of the Crown arising from Crown lands in the United Kingdom. The sovereign surrenders to parliament his absolute personal right to these revenues and he receives in return as a straight purchase price and as a matter of business £407,000

a year. That is what happens in England. That is the constitutional law and history of England with respect to the question of Crown lands in England and the revenues derived from them. Let us now turn to British North America and see how that principle has been adopted and applied with respect to the same problem.

When England acquired possession of British North America partly by conquest from France as in Eastern Canada and partly by mere assumption of authority as in British Columbia and the North West, the soil of the newly acquired possessions as far as it had not already, by previous authority, been granted to individuals, became a part of the hereditary domain of the English sovereigns. It became a part of that hereditary domain of which I have just been speaking. It became the absolute personal property of the sovereign over which and over the revenues arising from which he had complete personal control quite irrespective of any possible interference on the part of any parliament or Legislative Assembly whatever. The sovereign through his officials in these newly acquired territories disposed of these lands to whom he pleased and expended the revenues derived therefrom as he pleased. But when these new territories came under the dominion of England a movement of immigrants set in from England and elsewhere to occupy these vacant lands just as when the North West Territories became part of Canada, Canadians from the east came out to settle upon the vacant lands of the West. The Imperial Government established Legislative Assemblies in the various provinces and gave them power "to make laws for the peace, order and good government" of the respective provinces. These assemblies began to impose taxes by way of customs duties and otherwise to raise a revenue for public purposes. In time also a considerable revenue began to be derived from the Crown Lands just as a considerable revenue is derived

from the Crown lands in the North West today. The assemblies of course had the right, as the British parliament had the right, to control the revenues derived from the taxes they themselves imposed and paid. But the assemblies went further. Under the leadership of the advanced reformers they claimed the right to control the revenues derived from the crown lands in the different provinces. You remember the great struggle for responsible government. The assemblies were eager to secure control of all revenues so that, by holding the power of the purse, they could have the governor and his officials at their mercy and force them, by cutting off their supplies, to submit to the control of the people. The revenues from Crown Lands were considerable and furnished a safe reserve for the governors and their officials to fall back upon. That was the great reason why William Lyon Mackenzie and his party sought to secure the control of the ungranted lands. But what answer did the sovereign and his officials make? They replied simply that the ungranted lands of the crown within the Provinces of British North America were the personal property of the sovereign, that the revenues derived from them were part of those hereditary revenues of the crown over which the sovereign had absolute personal control and that the assemblies had no right whatever to interfere with them.

Now in that great struggle for responsible government, of which this difficulty about Crown Lands was a part, the people of the colonies won in the main. The Imperial Government yielded self government to the people of Canada. But the point which I desire that you should particularly notice, because it is upon this that my whole argument rests, is this; that with respect to the question of ownership of Crown Lands and the control of revenues derived from them, the assemblies as a matter of fact did not win. The Sovereign of England asserted to the last

and asserted successfully the absolute right of Her Majesty to control the revenues from Crown land in old Canada. It is true the assembly of that province ultimately obtained control of them, but you must observe very carefully how that was brought about. I have explained the bargain that is made by each Sovereign of England at his accession to the throne with respect to the Crown domain. There was the precedent before the Sovereign and the people of old Canada. And that precedent was adopted and followed. Her Majesty did indeed surrender to the old Canadian assembly the control of revenues derived from the Crown domain in that Province but she did it for a consideration, for a quid pro quo. She made through her officials a bargain with the assembly and that bargain is embodied in the Civil List Act, 1846. It is Chap. 114 of the Statutes of old Canada, 1846.* In that act you will find that the old Canadian Assembly granted a permanent vote of \$347,000 a year, for the support of the officials of Her Majesty's Government in Canada and by Clause 6 of that Act it is enacted that "during the times for which the sums mentioned are severally payable the same shall be accepted and taken by Her Majesty by way of Civil List instead of all territorial and other revenues at the disposal of the Crown arising in this Province."

There, you see, is the same old definite bargain. The Sovereign surrendered her absolute personal right to the revenues derived from the

Crown lands of the province and received in return as a business transaction a permanent vote of \$347,000 a year for the support of Her Government in that province. If I had time at my disposal I could show how at that time this was looked upon by the English authorities as a very substantial consideration for Her Majesty to receive. But my point you will observe to be this, that in British North America as well as in England this constitutional right of the Sovereign to the revenue derivable from the public domain has been recognized and acted upon. One word I would like to add in regard to that struggle about the lands in old Canada. It has recently been referred to as if it had been a struggle between the people of Canada and the people of Great Britain. This is a great mistake. It was simply a struggle between the Sovereign as an integral part of the machinery of government in the colonies on the one hand, and the people of the colony on the other. The British Government never for a moment presumed to say that the revenues derived from Crown lands in old Canada should be expended elsewhere than in that colony. They simply desired to retain control of them so that the Governor and his officials would not be dependent upon the assembly for supplies. When the assembly agreed to grant a permanent civil list and responsible government was allowed the reason for retaining those revenues in the possession of the Crown no longer existed.

* In the memorial addressed by the Territorial government to the Governor General embodying a draft bill for the establishment of a new province, this enactment is referred to as having been contained in the Union act of 1840. It is true there was such a clause in that act, but that was an act of the Imperial parliament and it was always a cause of complaint among the Canadian Reformers that the Imperial government should have presumed, as it did presume, to vote supplies out of the Canadian revenues

by way of permanent civil list. They contended that it was the Canadian Parliament that should pass such an act and their contention was eventually recognized. The obnoxious clauses of the Union Act were repealed and the Canadian act above referred to was passed instead, thus making it a purely Canadian matter, a simple bargain between the sovereign as part of the machinery of Canadian government and the assembly as representing the people of the province.

Now I believe it will be found to be the case that a similar bargain was made in the other original provinces of Confederation, though I have not recently been able to verify it by references to authorities. At any rate two things are clear, viz. 1. That the surrender by the Sovereign in 1846 applied only to old Canada. 2. That as far as anything done prior to Confederation is concerned there was no surrender by the Sovereign of any of her rights with regard to Crown lands, not included in any of the present provinces of the Dominion. This latter point is clear because as you are all well aware in 1867 when Confederation was formed Rupert's Land and the North West Territory did not belong to the Crown at all but to private parties.

When Confederation was effected in 1867 you are also well aware that in the division of assets and revenues between the four original provinces on the one hand and the Federal Government on the other it was agreed that the Crown lands in the provinces and the revenues derived from them should remain under the control of the provinces while the customs and excise were surrendered to the Dominion. It therefore followed that when the Dominion Government was organized in 1867 it had no revenues from Crown lands at all and no Crown lands to control or dispose of. In this connection it is interesting to read the Civil List Act that was passed by the Dominion Parliament in 1868. That act grants a permanent supply to Her Majesty for the support of certain officers of Her Government in Canada but unlike all previous Civil List Acts that had ever been passed it contains no reference to any surrender of any revenues from Crown lands to the Dominion Parliament. This was simply because there were no Crown lands within the limits of the Dominion at that time which the Sovereign had not already surrendered.

We now come to the question of how

the Dominion Parliament and Government secured control of any Crown lands at all, and this brings us to the question of the Hudson's Bay Territory or Rupert's Land. You all know the early history of this country. In 1670 King Charles the Second by Royal Charter, assuming ownership and authority because no other Christian Sovereign had assumed them, granted the ownership of the soil of all lands draining into Hudson's Bay, the absolute right of legislating in this territory and administering law there and a monopoly of trade forever, to an incorporated Company for a merely nominal quit rent, I think a deer's horn or something like that, as often, as His Majesty should enter the territories in question. This was a method often adopted in those days by the English kings for establishing a colony and in fact was the origin of the governments of several of the American Colonies. You will notice that three things were granted: 1st, ownership of the soil; 2nd, governmental authority; 3rd, monopoly of trade. For 200 years these rights were exercised by the Hudson's Bay Company over Prince Rupert's land, which included a good part of what are now the Provinces of Ontario and Quebec. When the Dominion was formed in 1867 the people of the four original provinces began to cast envious eyes upon these territories. They looked for openings for trade, for a market for their manufactures, and also, perhaps, an imperial spirit prompted in them a desire for wider power and more extended dominion. At any rate negotiations were entered into between the Hudson's Bay Company, the Imperial Government and the Federal Government at Ottawa for the union of these Territories with the Dominion. The result was that the Hudson's Bay Company surrendered their rights and privileges. They surrendered their ownership of the soil, they surrendered their rights of government, they surrendered their monopoly of trade, —but to whom? To the Federal Gov-

ernment at Ottawa? Not by any means. If you read the deed of surrender you will see that they surrendered them to Her Majesty the Queen. It was simply a surrender of a perpetual lease with certain governing powers and trading privileges attached to it. Thereupon the ownership of the soil of these Territories was vested again in the sovereign. These lands thereupon became once more a part of the domain of the British Crown and according to the immemorial law of England the hereditary revenues derived therefrom became absolutely and entirely the property of the sovereign to do with and expend as she pleased without the let or hindrance of any Parliament whatever. Of course there were conditions attached to the surrender of all their rights by the Hudson's Bay Company and of course one of these was that the Dominion Parliament should pay to the company the sum of £300,000. But there is no word in any document saying that that money was a purchase price of the land. That money was simply paid to the Company to get them out of the way, to get their monopoly of trade removed which has itself been worth to the people of the east a hundred times the amount paid, to get their rights of government removed, which satisfied the ambition of eastern statesmen, and to get the soil freed for settlement by British subjects who would become purchasers of eastern manufactures. If the payment of £300,000 had been meant as a purchase price of the soil why was not the deed of surrender made to the people who paid the price? Until that question is answered I think we need not listen to any argument derived from that money payment by the Dominion Government.

Now it is quite worth your while to notice what became of those great privileges surrendered by the Hudson Bay company. First, the monopoly of trade was surrendered and trade has since remained open to all persons whatever. Secondly, by the Rupert's Land Act of 1868 and

the Order in Council based thereon Rupert's Land was admitted into and became part of the Dominion of Canada and it was enacted that "the Parliament of Canada should have full power and authority to make, ordain and establish within the land and territory so admitted as aforesaid all such laws, institutions and ordinances and to constitute such courts and officers as may be necessary for the peace, order and good government of Her Majesty's subjects therein." Thus, you see, the rights of government after being surrendered by the Company to Her Majesty were definitely transferred by the Imperial authorities to the Parliament of the Dominion. But neither the Act of 1868 nor the order in council based upon it contains a single word about the third great right which had been surrendered by the Company to Her Majesty, viz: the proprietary right to the unoccupied lands. Those lands still remained vested in Her Majesty and until Her Majesty surrendered them or the revenues derived from them they continued to be the absolute personal property of Her Majesty to do with as she pleased in accordance with the constitutional law of the Empire.

It is sometimes argued that the right to legislate and govern implies the right to own the soil. But all precedent and authority are against such a proposition. The constitutional act, 1791, which established the Legislative Assemblies of Upper and Lower Canada contains words almost identical with those of the Rupert's Land Act of 1868. By that act those assemblies were given full power and authority to make laws for the peace, order and good government of the provinces mentioned. And yet as I have shown you the sovereign still asserted and successfully asserted her right to the ownership of the soil in those provinces and to the control of the revenues derived from it. In fact, the old reformers never ventured upon the absurdity of arguing that because the assemblies had power to legislate they therefore had owner-

ship of the soil. Neither can any sensible person argue now, merely because the Imperial Parliament gave the Dominion Parliament power to legislate for the North West Territories that therefore Her Majesty has thereby surrendered her hereditary right to the land and its revenues.

But, you will ask me again, how does it happen that for thirty years the Federal Government has been managing these public lands and expending the revenues derived from them? The answer is simple enough.

After 1846-50 a new principle was adopted by the Imperial Government with respect to the colonies. The policy of interference in internal affairs was abandoned. When the Dominion was formed in 1867 and the Dominion authorities asked for governing powers over Rupert's Land, the Imperial Government was disposed to be generous and help the infant Dominion. They granted the governing powers asked for and simply did not make any claim or raise any question as to the ownership of the lands and the revenues derived from them. The Dominion was prepared to bear the expense of governing and it would have been ungracious to raise any question about Territorial revenues. The Sovereign and her advisers simply allowed those revenues to be appropriated by the Federal Government and go towards meeting the general expenses of its administration. But we must remember that never by any act or deed did Queen Victoria or Edward VII. ever surrender their strict legal right to control those revenues to any Parliament or Assembly whatever.

Very well. In 1872 the Federal Parliament, acting quite within its authority as given it by the Rupert's Land Act of 1868 passed the first Dominion Lands Act.

It was by no means necessary that that act should have been passed at all because Her Majesty through her advisers in Canada had a perfect right of themselves without reference to Parliament, to make the regulations

contained in it with respect to the management and administration of the Crown lands. The act itself merely recites that it is "expedient" that such regulations should be made "by statute." It merely declares that the public lands shall be called "Dominion lands" and goes on to make regulations for the management of them. The sovereign through her representative the Governor General consented to that act, it is true, but from the beginning to the end of it there is not a single word, nor is there a single word to be found in the subsequent legislation or amendment of it, referring even indirectly to the proprietary right to the land nor to the revenues derived from it. It therefore follows that the sovereign by consenting to the Dominion Lands Act has merely consented that the rules and regulations by which her servants in Canada shall be guided in dealing with her hereditary domain in Canada shall be laid down by a statute law passed by the Dominion Parliament which was the only Parliament having authority to pass such a law. But she never did surrender to any Parliament or Assembly her right to control the revenues derived from these lands and therefore neither the Dominion Parliament, nor any Territorial or Provincial Assembly has a strict legal right to the ownership of our public lands or to the revenues derived from them until they are so surrendered.

This I think you will agree establishes the two first propositions which I stated to you in the beginning. Let me now deal briefly with the third and last proposition, which is, that according to all the precedents of British colonial history and according to the spirit of the Canadian constitutional arrangements the assembly of the new province will be entitled to assume control of this source of revenue.

Let us look first a little more closely at what happened when Rupert's Land was united with the Dominion.

You will observe first of all that after the surrender of the Hudson's Bay Company it was by no means necessary that these Territories should have been united to the Dominion at all. The Imperial Government could very well have got the Company out of the way themselves and then assumed the direction of affairs in the little colony. They could have appointed a Governor and instructed him to call an Assembly and could have given that Assembly power to make laws for the peace, order and good government of the Colony. They could have governed the Colony as Newfoundland is now governed, as Prince Edward Island and British Columbia were governed prior to their admission to the Union. And if the Imperial Government had taken this course can anyone have any doubt as to what they would have done with the question of public lands? Would they not have done just as they did in their other British North American colonies, i.e., surrender them at the proper time to the control of the colonial assembly in return for a permanent civil list? Most certainly they would have done so; and after a time perhaps the colony would have joined the Dominion as British Columbia did and would have retained control of its public lands as that province did.

But at the request of the Dominion Government the Imperial authorities took another course. In the address to the throne passed by the Parliament of Canada on the 16th and 17th Dec., 1867 that Parliament said: "We do therefore most humbly pray that your Majesty may be graciously pleased by and with the advice and consent of your most honorable Privy Council to unite Rupert's Land and the North West Territory with this Dominion and to grant to the Parliament of Canada authority to legislate for their future we fare and good government and we most humbly beg to express to your Majesty that we are willing to assume the duties and obligations of government and legislation

as regards these Territories."

The Imperial government therefore complied with that request. Instead of assuming such control themselves as they had in other colonies not in the Dominion they stepped aside and said to the Dominion Parliament: "You will act in our place. With respect to these Territories you shall be the Imperial authority. We pass over all our duties and obligations with respect to them to you and we entrust you with the government of them, fully believing that you will follow out the principles of our colonial system and apply them to this colony which we are entrusting to your care." I do not mean to say that those exact words were spoken, but I mean to say that those words express the intention and purpose of the Imperial Government in withdrawing their authority from these Territories and handing that authority over to the Federal Parliament. That being the case I maintain that it is the duty of the Federal Government to treat this British colony in the North West Territories which has been entrusted to its care in the same manner and according to the same principles as had been adopted and applied in Britain's dealings with Ontario, Quebec, Nova Scotia, New Brunswick and British Columbia, and that we in this new western colony should receive as generous treatment at the hands of what is for us, an Imperial Government as the people of Eastern Canada received from the Imperial Government in England.

In the the early days of the Canadian Colonies the financial relations between the colonial governments and the British Government were just as intimate as the financial relations between our Territorial government and the Government at Ottawa have hitherto been. The receipts and expenditures of each little colonial government were accounted for in Downing Street just as our Territorial expenditure has heretofore been accounted for to the Federal Government of the Dominion. We hear much

about the amount of money the Federal Government has spent in governing these Territories. But the Imperial Government in the early days of Upper and Lower Canada and the other provinces of the Dominion spent a great deal of money in acquiring, governing and protecting those colonies. It was therefore natural that the Imperial government should press very strongly Her Majesty's claim to the revenues derived from Crown lands in those colonies, just as it has been quite natural and proper that the Federal government, while it has borne so much of the expense of governing these Territories, should receive, as it has been receiving, whatever revenues the Crown lands here may have produced. But when the time came for colonial self government, when those eastern provinces had grown to manhood and were ready to bear their own burden of government and to take all responsibility, what did the Imperial Government do? Did they claim the ownership of the lands in those provinces and try to retain the revenues derived from them? Not at all. They acknowledged fully and freely the autonomy of the provinces and upon receiving the guarantee of a permanent provision for the expenses of Her Majesty's Government in the Colonies the lands and its revenues were placed at the disposal of the colonial assemblies. Now my contention is that for us in the Territories the Federal government has been the Imperial Government and if the Federal Government are engaged in any enquiry as to what is the proper course for them to pursue they have the plain, unequivocal example and precedent of the British government before them, an example and a precedent established in the case of those very eastern provinces whose representatives in the Dominion house will have the deciding voice in settling and disposing of this question.

Any argument in favor of the right of the Federal Government to assume permanent control of our Crown lands can, if what I have said is true,

rest only on an entire misconception and misunderstanding of the true position of the Federal Government with relation to these Territories. If what I have said is true, it is a complete mistake for the Federal Government to look upon the Crown lands of these Territories as a piece of property of their own, as a petuilar treasure, as a precious possession to be disposed of as they please. It is true they spent a little money in getting possession of them and considerable more in governing the settlers who have come to dwell upon them. But the Imperial Government spent millions of treasure and thousands of lives in acquiring the soil of Eastern Canada and the taxpayers of Great Britain are paying interest on that money today, and yet Great Britain does not for that reason assert the right to own and control the soil of Eastern Canada or of any part of British North America. And remember Canadians pay no share of the expenditure by which Great Britain acquired their soil and governed their country in early days while we in the Territories are paying our full share of the money spent by the Federal Government upon us.

My whole contention, then, on this third proposition, is simply this, that the arrangement of 1868 by which the Territories were united with the Dominion was a purely provisional scheme by which the Imperial Government stepped out of the way and entrusted the government to the Dominion authorities pending the gradual development of what was practically a new British Colony through the periods of its infancy to full provincial powers; that any attempt by the Dominion Government to deal with this colony otherwise than the Imperial Government would have dealt with it, otherwise than the Imperial Government did deal with the eastern provinces, would be a failure to fulfil the trust imposed upon them and would be a long descent from the noble and generous example of the Mother Country. The possession and control of these lands

for thirty years by the Federal Government has not been a possession and control by the Federal Government as against a fully fledged province of the Dominion but has been merely due to its Imperial position. When the time has now come for the Federal system to be perfected it is for the Dominion Government to retain the powers given it under the B. N. A. Act but in accordance with Imperial example and with the spirit of the B. N. A. Act to place the lands of the Territories under provincial control.

In conclusion let me say that I am perfectly well aware that in the earlier portion of these remarks I revived a purely technical claim of the Sovereign to the personal control of the Crown domain and that I may seem to be going far afield for an argument. But we must remember that the Sovereign of England is an integral part of the machinery of our government, that though in the flesh he lives in England, in essence and in spirit he is present at Victoria, at Regina, and at Toronto, as well as at Ottawa or London, that every act of our government is done in his name, that the Lieutenant Governors of the provinces are his direct representatives, and not the representatives of the Governor General, and that if the sovereign has not yet surrendered his immemorial right to his hereditary revenues derived from Crown lands in these Territories to any Parliament or Assembly, he has still the right to surrender them to such of two competing or rival parliaments as he may be pleased and advised. But he should not take the advice of an interested party. In a contest with the Federal Government we have still a right to revive and insist upon the letter of the law. We have still a right to say this: According to the letter of the law these lands and the revenues derived from them be-

long to the sovereign personally; according to the whole spirit of British colonial policy and of the Canadian constitution they belong to the people of these Territories; but by neither the letter of the law nor by its spirit has the Federal Government any right to enjoy them when full provincial autonomy is once allowed.

If therefore, in the new act which is to be passed there is a clause such as was inserted in the Manitoba Act which asks his Majesty's representative to consent that the new province shall be deprived of its public lands, we have still a right to appeal to the foot of the throne and to ask that the principles of the British colonial system and of our own Federal system be not overturned, but that His Majesty may be pleased to surrender his hereditary revenues in these Territories not to the Parliament of the Dominion but to the provincial assembly, as has been done in every other case except Manitoba.

Now, gentlemen, there are a great many more things in connection with this subject that might be referred to. There is the possibility of a satisfactory bargain being made by which we might receive a definite compensation for our public lands by way of a money grant. There is the question of compensation for lands already alienated. But it would take a great deal of time to discuss these questions properly and I have detained you too long already. I am aware that much of what I have said is not by any means new. But I do venture to hope that on one or two points some light has been thrown, which will be of some assistance to all of us in arriving at a proper and just opinion upon this far reaching problem of the control of the Territorial lands and I thank you for the attention you have so kindly given me.